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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 245

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, A CORPORATION,

Petitioner,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,

Respondents.

REPLY OF ELGIN, JOLIET AND EASTERN RAILWAY COMPANY TO BRIEFS IN OPPOSITION TO ITS PETITION FOR A WRIT OF CERTIORARI.

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THE BLAKELY PRINTING COMPANY, CHICAGO

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REPLY OF ELGIN, JOLIET AND EASTERN RAILWAY COMPANY TO BRIEFS IN OPPOSITION TO ITS PETITION FOR A WRIT OF CERTIORARI.

This Reply will bring to the Court's attention two recent developments which demonstrate the need for granting the Writ.

I.

During the period August 8 to August 15, 1962, legal proceedings transpired in Chicago which should lay to rest any suggestions that the question presented is not important, or does not require clarification, or is not subject to conflicting treatment by the courts. In fact, the most glaring conflict exists within the one circuit, the Seventh, from which this Petition has been taken.

On August 8, 1962, District Judge Perry of the Northern District of Illinois entered a final order in *Locomotive Engineers* v. *Baltimore & Ohio Railroad*, 45 CCH Labor Cases, para. 17,777, dismissing the amended complaint filed by five railway labor organizations, including the three respondent organizations in the case at bar. The amended complaint sought a declaratory judgment and injunction against 193 railroad companies involved in a Railway Labor Act major dispute with the 200,000 or more employees represented by the five organizations. The dispute concerned the railroads' attempts, after the statutory 30-day cooling-off period following the termination of negotiations and federal mediation, to place into effect certain important revisions in railroad work rules. Following the dismissal of the amended complaint on August 8, 1962, the plaintiff organizations immediately filed a notice of appeal and a motion requesting the District Judge to grant an injunction pending the organizations' appeal.

On August 10, 1962, after hearing testimony and argument, Judge Perry (who had granted the injunction pending appeal in the instant case to the plaintiff Elgin, Joliet and Eastern Railway Company after dismissing its complaint, and who was reversed by the Court of Appeals for the Seventh Circuit in the decision petitioner urges this Court to review by Certiorari) granted the plaintiffs' motion and issued an injunction pending appeal. 45 CCH Labor Cases, para. 17,778. A copy of Judge Perry's findings, conclusions and order is attached hereto as Appendix A.

A notice of appeal from Judge Perry's injunction pending appeal was immediately filed by the railroads. Then, on August 13, 1962, the appellant railroads filed a motion in the Court of Appeals for the Seventh Circuit to vacate the injunction, and the next day the appellee labor organizations filed an answer. On August 15, 1962, oral argu-

ment on the motion was heard before Circuit Judges Schnackenberg, Castle and Kiley, and on the same day the Court denied the motion to vacate the injunction pending appeal. A copy of the Court of Appeals order leaving in effect the injunction pending appeal is attached hereto as Appendix B.

This was the same Court which, less than four months before, reversed the same District Judge's issuance of the injunction pending appeal involved in the instant case, and which denied, only two months before, the Elgin, Joliet and Eastern Railway Company's petition for rehearing of that reversal. As things now stand, the status of the injunction pending appeal from the dismissal of a complaint in a Railway Labor Act injunction case is, to say the least, confused.

The significance of the question, and the evident public interest in preserving the *status quo* pending appeal, have been shown plainly in the *B. & O.* litigation, by the five railroad labor organizations' successful injunctive action to protect their many thousands of members from important work rules revisions sought to be initiated before the legality of the revisions had been resolved on appeal.

II.

Since the filing of the Petition in this case another Circuit has treated the injunction pending appeal question inconsistently with the ruling of the Court of Appeals below. In *Texas & New Orleans Railroad* v. *Trainmen*, 45 CCH Labor Cases, para. 17,716 (July 6, 1962, reported July 19, 1962), the Court of Appeals for the Fifth Circuit, in a Railway Labor Act injunction case, affirmed the District Court which had "concluded that the Norris-LaGuardia Act precluded injunctive relief and on July 24 [1961] denied the request for a preliminary injunction." 45 CCH

Labor Cases at page 27,126. See 197 F. Supp. 348 (S. D. Tex. 1961) for the District Court's opinion. The Court of Appeals expressly recognized (45 CCH Labor Cases at page 27,126) that "on the same day [July 24, 1961], however, the [district] court entered an injunction pending appeal."

The Fifth Circuit did not question the District Court's action in issuing the injunction pending appeal. In tacitly approving the granting of the injunction pending appeal, the Fifth Circuit joins the growing number of courts, exclusive of the Seventh Circuit in the instant case, which have either granted such injunctions or approved them.

In this connection the BLFE-ORCB Brief in Opposition (at page 9) makes a statement which should be corrected. That Brief asserts: "Respondents have searched the petition without finding any reference to a supposedly conflicting decision by another court of appeals on the question of an anti-strike injunction pending appeal. No reference was found to a conflicting district court decision except the trial court in which this suit originated."

The attention of the Court and of the BLFE-ORCB is respectfully directed to page 13 of the Petition, which reads in part:

> "The court's holding overruled *sub silentio* a long line of lower federal court labor injunction cases decided since the enactment of the [Norris-LaGuardia] Act.[3] In these cases injunctions pending appeal were uniformerly granted even though the Norris-LaGuardia Act had been held or had arguably applied to oust jurisdiction in the main case. The approach of these courts in this situation is wholly consistent with a proper analysis of the statute."

Footnote 3 of the Petition, referred to in this quotation, collects the cases and is here reprinted for convenience:

> "3. *Chicago River & Indiana R. Co. v. Brotherhood of Railroad Trainmen*, 229 F. 2d 926 (7th Cir. 1956), aff'd 353 U. S. 30 (1957); *Norfolk & Portsmouth Belt Line R. Co. v. Brotherhood of Railroad Trainmen*, 248 F. 2d 34 (4th Cir. 1957), cert. den. 355 U. S. 914 (1958); *Int'l Ladies' Garment Workers' Union v. Donnelly Garment Co.*, 147 F. 2d 246 (8th Cir. 1945), cert. den. 325 U. S. 852 (1945); *Chicago & Northwestern Ry. Co. v. Order of Railroad Telegraphers*, 36 CCH Labor Cases, para. 65,103 (N. D. Ill. 1958), motion to dismiss Federal Rule 62(c) injunction denied, 36 CCH Labor Cases, para. 65,283 (7th Cir. 1959)."

CONCLUSION.

In view of developments since the filing of the Petition in this case, the need for review by this Court seems increased. The Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

IN THE
UNITED STATES DISTRICT COURT
For the
Northern District of Illinois
Eastern Division.

Brotherhood of Locomotive Engineers, et al.,
Plaintiffs,
vs.
The Baltimore & Ohio Railroad Company, et al.,
Defendants.
No. 62 C 1451.

PERRY, D. J.: This matter came on for hearing on plaintiffs' motion for an injunction pending appeal, the plaintiffs have duly filed a Notice of Appeal and Appeal Bond, the plaintiffs and defendants have been fully heard on plaintiffs' motion for injunction pending appeal, and the Court is fully advised in the premises.

Findings of Fact.

I. This action involves a claimed violation of the Railway Labor Act by the defendants and the class of railroads they represent by their threat to put into effect on August 16, 1962 a "Promulgation of Revisions in Work Rules" dated July 17, 1962, and their threat to put into effect on August 16, 1962 a substituted "Promulgation of Revisions in Work Rules" dated August 6, 1962.

II. The railroads that are parties to said Promulgations

number approximately 200, and are too numerous to be brought into Court. The character of the rights plaintiffs assert against said railroads are several, there are common questions of law and fact affecting the said rights, and common relief is sought against said railroads. The named defendants fairly insure the adequate representation of all members of the class.

III. The contents of the Promulgation of August 6, 1962, if put into effect, would drastically change the rates of pay, rules, and working conditions of some 200,000 employees of the railroads represented in collective bargaining by the plaintiffs.

IV. The Promulgation announces, with respect to some of the drastic changes, that all agreements, rules, regulations, interpretations, and practices, however established and theretofore in effect, are eliminated and cancelled to the extent that they conflict in any respect with said Promulgation.

V. For many years the plaintiffs have had collective bargaining agreements with the defendant carriers and the carriers represented by the defendants, containing numerous, detailed, and substantially interrelated rules concerning the assignment of firemen, helpers, trainmen, and other train-and-engine-service employees of the railroads, the requirement of assignment of such employees to such service, the minimum number of employees in each of such classification of such employees to be assigned to a train or engine and the establishment of terminals, seniority district, and divisions. Many thousands of railroad employees represented by the plaintiffs have built up substantial seniority for particular assignments and have established homes and community ties based upon such assignments. If the Promulgation of August 6, 1962 is placed in effect, said employees would be subject to having the origin or termination of their runs or their place of work

changed unilaterally by the railroads and changed from time to time.

VI. For many years it has been the practice to make changes in rates of pay, rules, or working conditions specifying existing rules or conditions that were changed thereby.

VII. If, as claimed, the terms of the Promulgation of August 6, 1962 would be installed unlawfully, the damage to the plaintiffs and the employees they represent would be impossible to calculate and would be irreparable. Some of the injury to plaintiffs and the employees represented by them cannot be calculated in money.

VIII. The rights claimed by the plaintiffs for the employees they represent do not merely concern rates of pay, job assignments and other rules, and working conditions, but involve also the discharge of thousands of employees from positions long held by them, and the dislocation of many others, and their families, from their homes and communities.

IX. The rates of pay, rules, and working conditions which the Promulgation of August 6, 1962 would abrogate or modify have been agreed to by the plaintiffs and the railroads on a continuing basis through collective bargaining. The granting of an injunction pending appeal will temporarily continue in effect such rates of pay, rules, and working conditions agreed to until the Court of Appeals can review the legality of the threat to put into effect the terms of said Promulgation.

X. The Court finds that its judgment and decree denying the preliminary injunction and dismissing the complaint for failure to state a claim upon which relief can be granted include legal questions of first impression in the Courts of the United States, and no settled rules of law have heretofore been laid down concerning those issues.

XI. The Court has inquired into and considered the equities of the parties herein and has further considered the equities of the general public as they would be affected by this matter. The Court has balanced the equities and found the equities of the plaintiffs and the general public greater than those of the defendants herein.

Conclusions of Law.

1. Findings of Fact II, VII, IX, X, and XI are repeated as Conclusions of Law.

2. If the Court of Appeals determines that putting into effect the Promulgation of August 6, 1962 would be unlawful, the plaintiffs and the employees represented by them and their families will have no adequate remedy at law for such terms having been unilaterally imposed by the railroad.

3. The threatened action to put into effect the terms of said Promulgation, if illegal, will frustrate the purposes and operation of the Railway Labor Act, and will deprive the plaintiffs and those they represent of their rights under the Railway Labor Act.

4. The equities in favor of maintaining the status quo during the pendency of plaintiffs' appeal substantially outweigh the equities against maintaining the status quo.

5. The jurisdiction of this Court to grant an injunction during the pendency of this appeal exists under the provisions of Rule 62(c) of the Federal Rules of Civil Procedure and the Judicial Code and the inherent powers of the Court.

6. The provisions of the Norris-La Guardia Act (29 U. S. C. § 101 et seq.) do not apply in this case so as to deprive this Court of jurisdiction to grant an injunction restraining the defendant from putting their promulgation in effect during the pendency of the appeal under the provisions of Rule 62(c).

Order Under 62(c) F. R. C. P.

This matter having come on for hearing upon plaintiffs' motion for an injunction pending appeal, and the plaintiffs having duly filed a Notice of Appeal and Appeal Bond, and the plaintiffs and defendants having been fully heard on plaintiffs' motion for injunction pending appeal, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, under Rule 62(c) of the Federal Rules of Civil Procedure, that the defendants, their officers, agents, employees, attorneys, and all others acting in concert or in participation with them be, and they hereby are, enjoined and restrained from putting into effect the "Promulgation of Revision in Work Rules", a copy of which is attached to the amendment to the complaint as Appendix B; during the pendency of plaintiffs' appeal.

Enter:

J. S. PERRY,
Judge.

Date: August 10, 1962.

APPENDIX B.

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Brotherhood of Locomotive Engineers, et al., *Plaintiffs-Appellees,* *vs.* The Baltimore & Ohio Railroad Company, et al., *Defendants-Appellants.*	No. 13855.

Before:

Hon. Elmer J. Schnackenberg, Circuit Judge,
Hon. Latham Castle, Circuit Judge,
Hon. Roger J. Kiley, Circuit Judge.

This matter comes before the Court on the Emergency Motion of Defendants-Appellants to dissolve and vacate the injunction pending appeal, affidavit and brief in support and the Answer of Plaintiffs-Appellees to said Motion, and oral arguments having been heard by the Court and the Court being fully advised in the premises,

IT IS ORDERED that the said Emergency Motion to dissolve and vacate injunction pending appeal be and the same is hereby DENIED.

August 15, 1962.